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Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

Russell G. Graham; and  
Kristen Graham;

Plaintiffs,

v.

Gurstel Chargo, P.A.;

Defendant.

No.

**COMPLAINT**

(Jury Trial Demanded)

**I. Preliminary Statement**

1. Plaintiffs bring this action for damages based upon Defendant's violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et seq.* Plaintiffs seek to recover statutory damages, actual damages, costs and attorney's fees.

**II. JURISDICTION**

2. Jurisdiction of this Court, over this action and the parties herein, arises under 15 U.S.C. § 1692k(d) (FDCPA), and 28 U.S.C. § 1331. Venue

1 lies in the Prescott Division of the District of Arizona as Plaintiffs'  
2 claims arose from acts of the Defendant perpetrated therein.

### 3 **III. PARTIES**

- 4 3. Plaintiffs reside in Yavapai County, Arizona.
- 5 4. Plaintiffs are natural persons who were allegedly obligated to pay a  
6 debt.
- 7 5. Plaintiffs are "consumers" as that term is defined by FDCPA §  
8 1692a(3).
- 9 6. Defendant Gurstel Chargo, P.A. (hereinafter "Gurstel") is a Minnesota  
10 corporation doing business within the State of Arizona as a collection  
11 law firm.
- 12 7. Gurstel collects or attempts to collect debts owed or asserted to be  
13 owed or due another.
- 14 8. Gurstel is a "debt collector" as that term is defined by FDCPA §  
15 1692a(6).

### 16 **IV. Factual Allegations**

- 17 9. Sometime prior to 2009, Plaintiffs incurred a debt through the use of a  
18 credit card account with Chase Bank USA, N.A.
- 19 10. The Chase credit card was used primarily for personal, family, or  
20 household purposes.
- 21 11. Plaintiffs subsequently defaulted on the Chase credit card account.
- 22 12. Sometime in 2010, Chase hired Gurstel to bring legal action against  
23 Plaintiffs to collect on the credit card account.
- 24 13. On May 17, 2010, Gurstel filed suit on behalf of Chase in the Yavapai  
25 County Superior Court seeking to collect the defaulted credit card

- 1 account.
- 2 14. During the lawsuit, Plaintiffs and Gurstel reached a settlement and
- 3 entered into a stipulated judgment. (Copy attached as Exhibit A).
- 4 15. Under the stipulated judgment, Gurstel would debit Plaintiffs' bank
- 5 account in the amount of \$862.00 each month beginning on July 10,
- 6 2010 and continuing until the total principal amount of \$22,942.80 was
- 7 paid.
- 8 16. The stipulated judgment also provided credit for Plaintiffs' prior
- 9 payment of \$2,300.00.
- 10 17. Upon information and belief, Gurstel began debiting Plaintiffs' bank
- 11 account on July 10, 2010 and continued to do so through July 10, 2012.
- 12 18. Upon information and belief, Gurstel debited Plaintiffs' bank account
- 13 each and every month in the amount of \$862.50, rather than the agreed
- 14 upon amount of \$862.00.
- 15 19. Upon information and belief, immediately prior to each debit, Gurstel
- 16 mailed Plaintiffs a "Payment Reminder" notice notifying them of the
- 17 upcoming debit for the month.
- 18 20. On or about July 2, 2012, Gurstel sent Plaintiffs a "Payment Reminder"
- 19 stating that the amount of \$399.80 would be debited from Plaintiffs'
- 20 bank account on July 10, 2012. (Copy attached as Exhibit B).
- 21 21. On or about July 10, 2012, Gurstel generated a check in the amount of
- 22 \$862.50, rather than the \$399.80 noticed in its letter, and withdrew
- 23 \$862.50 from Plaintiffs' bank account on July 12, 2012. (Copy of
- 24 check attached as Exhibit C).
- 25 22. No further debits were made to Plaintiffs' bank account.

1 23. On or about January 8, 2013, Gurstel sent Plaintiff Kristen Graham a  
2 letter stating that a Satisfaction of Judgment was enclosed, and that the  
3 judgment had been fully satisfied, but no satisfaction of judgment was  
4 enclosed with the letter.

5 24. Within the year immediately prior to the filing of this action, upon  
6 information and belief, Gurstel withdrew more money from Plaintiffs'  
7 bank account that authorized by the stipulated judgment entered into by  
8 the parties in July 2010.

9 25. As a result and proximate cause of Defendant's actions as set forth  
10 herein, Plaintiffs have suffered actual damages.

## 11 **V. Causes of Action**

### 12 **a. Fair Debt Collection Practices Act**

13 26. Plaintiffs repeat, reallege, and incorporate by reference the foregoing  
14 paragraphs.

15 27. Defendant's violations of the FDCPA include, but are not necessarily  
16 limited to, 15 U.S.C. §§ 1692e, 1692e(10), 1692f(1), and 1692f(2).

17 28. As a direct result and proximate cause of Defendant's actions in  
18 violation of the FDCPA, Plaintiffs have suffered actual damages.

## 19 **VI. DEMAND FOR JURY TRIAL**

20 Plaintiffs hereby demand a jury trial on all issues so triable.

## 21 **VII. PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs request that judgment be entered against  
23 Defendant for:

- 24 a) Actual damages under the FDCPA;  
25 b) Statutory damages under the FDCPA;

- 1 c) Costs and reasonable attorney's fees pursuant to the FDCPA; and  
2 d) Such other relief as may be just and proper.  
3

4 DATED April 3, 2013.

5 s/ Floyd W. Bybee  
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